

Add Revenue and Taxation Code Section 6369.6 to the Sales and Use Tax Law to provide a sales and use tax exemption for terminally ill patients on purchases of medical marijuana.

Source: Honorable Jerome E. Horton

Existing Law. Except where the law specifies an exclusion or exemption, California's Sales and Use Tax Law¹ imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state. Therefore, under the law, sales tax applies to retail sales of marijuana, including medical marijuana, to the same extent as any other retail sale of tangible personal property.

For patient treatment, the law² exempts from sales and use tax retail sales of medicines, as defined, when the medicines sold or furnished are:

- prescribed by an authorized person and dispensed on prescription filled by a pharmacist,
- furnished by a licensed physician to his or her own patient,
- furnished by a health facility for treatment pursuant to a licensed physician's order, or sold to a licensed physician.

This Proposal. This proposal exempts sales of medical marijuana to terminally ill patients that possess a BOE-issued medical marijuana exemption certificate. As proposed, the BOE must create an exemption certificate with a unique license number. Upon satisfactory proof of a terminal illness by the patient's attending physician, the BOE must issue the certificate to a terminally ill patient. The certificate remains valid for the same period as the patient's California Department of Public Health's Medical Marijuana Program's identification card, and may be renewed once. Under the proposal, if a person uses the exemption certificate contrary to specified requirements, the person is liable for the applicable sales or use tax, interest, and penalties on the purchase.

Background. Generally, caregivers and medical marijuana dispensaries are not registered pharmacists or licensed health facilities. Accordingly, their medical marijuana sales do not qualify for the current medicine exemption in law, despite the purchasers' possession of a medical marijuana identification card. Accordingly, under existing law, generally tax applies to sales of medical marijuana.

Compassionate Use Act. When a physician recommends medical marijuana, existing state law³ allows patients or primary caregivers to cultivate or possess marijuana for the patient's medical use, as specified.

¹ Part 1, Division 2 of the Revenue and Taxation Code (commencing with Section 6001).

² Sales and Use Tax Law Section 6369.

³ Compassionate Use Act of 1996 (Proposition 215 of 1996).

Although numerous medical marijuana dispensaries conduct business in California today, medical marijuana sales continue to be illegal under federal law. State law,⁴ however, allows legal sales of medical marijuana under established statewide guidelines for Proposition 215 enforcement. In particular, state law specifies that, in certain cases, nonprofit distribution is allowed for patient cultivation cooperatives, small-scale caregiver gardeners, and dispensing collectives.

Section 6369.6 is added to the Revenue and Taxation Code to read:

6369.6. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale, and the storage, use, or other consumption, in this state of, medical marijuana for consumption by a terminally ill patient.

(b) (1) No exemption shall be allowed under this section unless the purchaser furnishes the retailer with a medical marijuana exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe, and the retailer retains the exemption certificate in its records. The medical marijuana exemption certificate shall contain the sales price of the medical marijuana that is exempt pursuant to subdivision (a), identification card serial number, and any other information deemed necessary by the board.

(2)(A) The board shall establish and maintain a program for the issuance of a medical marijuana exemption certificate. A medical marijuana exemption certificate shall be issued to a person or their primary caregiver upon satisfactory proof of terminal illness, and shall be valid for the same period as the identification card issued to the terminally ill patient pursuant to Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code and may be renewed once unless otherwise authorized by the board under regulations adopted pursuant to this section.

(c) A person who seeks a medical marijuana exemption certificate shall provide all of the following to the board, in a manner as determined by the board:

- (1) The name of the terminally ill patient.
- (2) Written documentation by the patient's attending physician that certifies the patient is terminally ill at the time of diagnosis.
- (3) The name, office address, office telephone number, and California medical license number of the person's attending physician.
- (4) The name and the duties of the primary caregiver.
- (5) A government-issued photo identification card of the person and of the designated primary caregiver, if any.
- (6) The identification card issued by the Department of Public Health.
- (7) Any other information deemed necessary by the board.

⁴ [Senate Bill 420](#) (Stats. 2003, Ch.875, Vasconcellos).

(d) For purposes of this section:

(1) "Attending physician" has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

(2) "Marijuana" has the same meaning as that term is defined in Section 11018 of the Health and Safety Code.

(3) "Medical Marijuana" means marijuana used for medical purposes in accordance with Health and Safety Code sections 11362.5 and 11362.7 et seq.

(4) "Primary caregiver" has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

(5) "Terminally ill" has the same meaning as that term is defined in subdivision (c) of Section 11159.2 of the Health and Safety Code.

(6) "Written documentation" means certification by the attending physician that the patient is terminally ill.

(e) Any person that uses a medical marijuana exemption certificate in a manner contrary to the requirements of this section shall be liable for payment of sales tax as if the purchaser were a retailer making a retail sale of the property at the time of such use and the sales price of the marijuana to the purchaser shall be deemed the gross receipts from the retail sale.